

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 474

Introduced by Agriculture Committee: Dierks, 40, Chairperson;
Chambers, 11; Cudaback, 36; Robak, 22;
Schellpeper, 18; Vrtiska, 1

Read first time January 14, 1999

Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Nebraska Pure Food Act; to amend section
2 81-2,252, Reissue Revised Statutes of Nebraska, and
3 sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01,
4 81-2,262, 81-2,270, 81-2,272.08, 81-2,272.18,
5 81-2,272.24, 81-2,281, and 81-2,288.01, Revised Statutes
6 Supplement, 1998; to define and redefine terms; to adopt
7 federal law by reference; to change and provide
8 requirements; to harmonize provisions; and to repeal the
9 original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,239, Revised Statutes
2 Supplement, 1998, is amended to read:

3 81-2,239. Sections 81-2,239 to 81-2,292 and sections 5
4 to 7, 13, 15, 18, and 19 of this act and the provisions of the Food
5 Code, ~~and~~ the Food Salvage Code, and the Current Good Manufacturing
6 Practice in Manufacturing, Packing, or Holding Human Food adopted
7 by reference in sections 81-2,257.01 and 81-2,258 and section 7 of
8 this act shall be known and may be cited as the Nebraska Pure Food
9 Act.

10 Sec. 2. Section 81-2,240, Revised Statutes Supplement,
11 1998, is amended to read:

12 81-2,240. For purposes of the Nebraska Pure Food Act,
13 unless the context otherwise requires, the definitions found in
14 sections 81-2,241 to 81-2,254.01 and sections 5 and 6 of this act
15 shall be used. In addition, the definitions found in the codes and
16 practice adopted by reference in sections 81-2,257.01 and 81-2,258
17 and section 7 of this act shall be used.

18 Sec. 3. Section 81-2,244.01, Revised Statutes
19 Supplement, 1998, is amended to read:

20 81-2,244.01. Food Code shall mean the 1995
21 Recommendations of the United States Public Health Service, Food
22 and Drug Administration, except sections 1-201.10(B)(2), (31),
23 (32), (53) and (68), 2-102.11, 2-103.11(H), 2-201, 2-301.12,
24 2-301.13, 2-301.14, 2-301.16, 2-402.11, 2-403.11, 3-201.14,
25 3-201.16, 3-201.17(D), 3-202.11, 3-301.11, 3-304.16,
26 3-401.11(A)(4), 3-401.15, 3-403.11, 3-501, 3-502.11, 3-502.12,
27 3-603.11, 4-301.12(C)(5) and (D), 4-603.16(C), 4-603.17, 5-203.15,
28 5-302.16, 6-301.11(B), 8-101, 8-102, 8-201.11, 8-201.12,

1 8-201.13(A)(2) and (3) and (B), 8-201.14(C), 8-202 through 8-304,
2 8-401.10(B)(2), 8-402.20 through 8-403.20, ~~and~~ 8-403.50 through
3 8-404.12, and 8-405.20(B). The term Food Code does not include the
4 annexes of such federal recommendations.

5 Sec. 4. Section 81-2,245.01, Revised Statutes
6 Supplement, 1998, is amended to read:

7 81-2,245.01. Food establishment shall mean an operation
8 that stores, prepares, packages, serves, sells, vends, or otherwise
9 provides food for human consumption. The term does not include:

10 (1) An establishment or vending machine operation that
11 offers only prepackaged foods that are not potentially hazardous;

12 (2) A produce stand that only offers whole, uncut fresh
13 fruits and vegetables;

14 (3) A food processing plant;

15 (4) A salvage establishment;

16 (5) A private home where food is prepared or served for
17 personal use, a small day care in the home, or a hunting lodge,
18 guest ranch, or other operation where no more than ten paying
19 guests eat meals in the home;

20 (6) A private home or other area where food that is not
21 potentially hazardous is prepared for sale or service at a
22 religious, charitable, or fraternal organization's bake sale or
23 similar function; and

24 (7) The location where food prepared by a caterer is
25 served so long as the caterer only minimally handles the food at
26 the serving location. ~~+~~ and

27 ~~(8) Educational institutions, health care facilities,~~
28 ~~nursing homes, and governmental organizations which are inspected~~

1 by a state agency or a political subdivision other than the
2 regulatory authority for sanitation in the food preparation areas.

3 Sec. 5. Limited food vending machine shall mean a
4 vending machine which does not dispense potentially hazardous food.

5 Sec. 6. Pushcart shall mean a non-self-propelled vehicle
6 limited to serving food which is not potentially hazardous or
7 commissary wrapped food maintained at temperatures in compliance
8 with the Nebraska Pure Food Act or limited to the preparation and
9 serving of frankfurters.

10 Sec. 7. The Legislature hereby adopts by reference the
11 Current Good Manufacturing Practice In Manufacturing, Packing, or
12 Holding Human Food found in 21 C.F.R. part 110 as it exists on the
13 effective date of this act.

14 Sec. 8. Section 81-2,252, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-2,252. Regulatory authority shall mean the department
17 or a political subdivision or state agency under contract with the
18 department to perform regulatory functions authorized pursuant to
19 the Nebraska Pure Food Act.

20 Sec. 9. Section 81-2,262, Revised Statutes Supplement,
21 1998, is amended to read:

22 81-2,262. Certified copies of the codes and practice
23 adopted by reference pursuant to sections 81-2,257.01 and 81-2,258
24 and section 7 of this act shall be filed in the offices of the
25 Secretary of State, Clerk of the Legislature, and department.

26 Sec. 10. Section 81-2,270, Revised Statutes Supplement,
27 1998, is amended to read:

28 81-2,270. (1) No person shall operate: (a) A food

1 establishment; (b) a food processing plant; or (c) a salvage
2 operation, without a valid permit which sets forth the types of
3 operation occurring within the establishment.

4 (2) Application for a permit shall be made to the
5 director on forms prescribed and furnished by the department. Such
6 application shall include the applicant's full name and mailing
7 address, the names and addresses of any partners, members, or
8 corporate officers, the name and address of the person authorized
9 by the applicant to receive the notices and orders of the
10 department as provided in the Nebraska Pure Food Act, whether the
11 applicant is an individual, partnership, limited liability company,
12 corporation, or other legal entity, the location and type of
13 proposed establishment or operation, and the signature of the
14 applicant. Application for a permit shall be made prior to the
15 operation of a food establishment, food processing plant, or
16 salvage operation and shall be accompanied by an initial permit fee
17 of fifty dollars and an initial inspection fee in the same amount
18 as is annually required pursuant to subsection (3) of this section
19 if inspections are required to be done by the department. If the
20 food establishment, food processing plant, or salvage operation has
21 been in operation prior to applying for a permit, the applicant
22 shall pay an additional fee of fifty dollars.

23 (3) Payment of the initial permit fee, the initial
24 inspection fee, and the fee for failing to apply for a permit prior
25 to operation shall not preclude payment of the annual inspection
26 fees due on August 1 of each year. Except as provided in
27 subsections (6) through (9) of this section and subsection (1) of
28 section 81-2,281, a permitholder shall pay annual inspection fees

1 on or before August 1 of each year as follows:

2 (a) A convenience store, licensed beverage establishment,
3 limited food service establishment, and temporary food
4 establishment, fifty dollars plus twenty-five dollars for each
5 separate and distinct food preparation area within the
6 establishment other than the first such area;

7 (b) A mobile food unit, twenty-five dollars per food
8 unit. If the mobile food unit is supplied by a commissary this fee
9 is in addition to the inspection fee due for the commissary;

10 (c) A pushcart, ten dollars per pushcart. If the
11 pushcart is supplied by a commissary this fee is in addition to the
12 inspection fee due for the commissary;

13 (d) One to ten vending machines, ten dollars; eleven to
14 twenty vending machines, twenty dollars; twenty-one to thirty
15 vending machines, thirty dollars; thirty-one to forty vending
16 machines, forty dollars; and over forty vending machines, fifty
17 dollars. ~~This fee, based upon the number of vending machines,~~ Only
18 vending machines which are not limited food vending machines shall
19 be included in the number of vending machines upon which the fee is
20 determined. If the vending machines are supplied by a commissary
21 this fee is in addition to the inspection fee due for the
22 commissary; and

23 (e) A food processing plant, a salvage operation, and any
24 other food establishment, including a commissary, seventy dollars
25 plus twenty-five dollars for each separate and distinct food
26 preparation area within the establishment other than the first such
27 area.

28 (4) Whenever an establishment is engaged in more than one

1 food handling activity listed under subsection (3) of this section,
2 the inspection fee charged shall be based upon the primary activity
3 conducted within the establishment as determined by the department.

4 (5) The department may impose a penalty for an inspection
5 fee which is more than one month delinquent. The penalty may not
6 exceed fifty percent of the fee for the first month of delinquency
7 and one hundred percent of the fee for the second month of
8 delinquency.

9 (6) An educational institution, health care facility,
10 nursing home, or governmental organization operating any type of
11 food ~~service~~ establishment other than a mobile food unit or
12 pushcart is exempt from the requirements in subsections (1) through
13 (5) of this section.

14 (7) A person whose primary food-related business activity
15 is determined by the department to be egg handling within the
16 meaning of the Nebraska Graded Egg Act and who is validly licensed
17 and paying fees pursuant to such act is exempt from the permit and
18 inspection fee requirements of the Nebraska Pure Food Act.

19 (8) A person holding a permit or license and regulated
20 under the Nebraska Manufacturing Milk Act or the Nebraska
21 Pasteurized Milk Law and an egg handler licensed and regulated
22 under the Nebraska Graded Egg Act are exempt from the Nebraska Pure
23 Food Act.

24 (9) A religious, charitable, or fraternal organization
25 operating any type of temporary food establishment, mobile food
26 unit, or pushcart is exempt from the requirements of subsections
27 (1) through (5) of this section. Any such organization operating
28 any nontemporary food establishment prior to July 1, 1985, is

1 exempt from the requirements of subsection (2) of this section.

2 Sec. 11. Section 81-2,272.08, Revised Statutes
3 Supplement, 1998, is amended to read:

4 81-2,272.08. (1) A food employee shall clean his or her
5 hands and exposed portions of his or her arms with a cleaning
6 compound in a lavatory that is equipped as specified in the Food
7 Code by vigorously rubbing together the surfaces of his or her
8 lathered hands and arms for at least twenty seconds and thoroughly
9 rinsing with clean water. A food employee shall pay particular
10 attention to the areas underneath the fingernails and between the
11 fingers. A food employee shall clean his or her hands and exposed
12 portions of his or her arms:

13 ~~(1)~~ (a) After touching bare human body parts other than
14 clean hands and clean, exposed portions of arms;

15 ~~(2)~~ (b) After using the toilet room;

16 ~~(3)~~ (c) After caring for or handling any animals;

17 ~~(4)~~ (d) After coughing, sneezing, using a handkerchief or
18 disposable tissue, using tobacco, eating, or drinking;

19 ~~(5)~~ (e) After handling soiled equipment or utensils;

20 ~~(6)~~ (f) Immediately before engaging in food preparation
21 including working with exposed food, clean equipment and utensils,
22 and unwrapped single-service and single-use articles;

23 ~~(7)~~ (g) During food preparation, as often as necessary to
24 remove soil and contamination and to prevent cross contamination
25 when changing tasks;

26 ~~(8)~~ (h) When switching between working with raw foods and
27 working with ready-to-eat foods; and

28 ~~(9)~~ (i) After engaging in other activities that

1 contaminate the hands.

2 (2) After hand washing, a towel shall not be used more
3 than once for hand drying, and hands shall be dried in accordance
4 with the Food Code.

5 Sec. 12. Section 81-2,272.18, Revised Statutes
6 Supplement, 1998, is amended to read:

7 81-2,272.18. Raw animal foods cooked in a microwave oven
8 shall be:

9 (1) Rotated or stirred throughout or midway during
10 cooking to compensate for uneven distribution of heat;

11 (2) Covered to retain surface moisture;

12 (3) Heated ~~an additional twenty-five degrees Fahrenheit~~
13 ~~(fourteen degrees Celsius)~~ above the temperature specified in the
14 Nebraska Pure Food Act to compensate for shorter cooking times to a
15 temperature of at least one hundred sixty-five degrees Fahrenheit
16 (seventy-four degrees Celsius) in all parts of the food; and

17 (4) Allowed to stand covered for two minutes after
18 cooking to obtain temperature equilibrium.

19 Sec. 13. (1) Except as specified under subsections (2),
20 (3), and (5) of this section, potentially hazardous food that is
21 cooked, cooled, and reheated for hot holding shall be reheated so
22 that all parts of the food reach a temperature of at least one
23 hundred sixty-five degrees Fahrenheit (seventy-four degrees
24 Celsius) for fifteen seconds.

25 (2) Except as specified under (3) of this section,
26 potentially hazardous food reheated in a microwave oven for hot
27 holding shall be reheated so that all parts of the food reach a
28 temperature of at least one hundred sixty-five degrees Fahrenheit

1 (seventy-four degrees Celsius) and the food is rotated or stirred,
2 covered, and allowed to stand covered two minutes after reheating.

3 (3) Ready-to-eat food taken from a commercially
4 processed, hermetically sealed container, or from an intact package
5 from a food processing plant, shall be heated to a temperature of
6 at least one hundred forty degrees Fahrenheit (sixty degrees
7 Celsius) for hot holding.

8 (4) Reheating for hot holding shall be done rapidly and
9 the minimum temperature specified under subsection (1) of this
10 section shall be reached within two hours.

11 (5) Remaining unsliced portions of roasts of beef that
12 are cooked as specified in the Nebraska Pure Food Act may be
13 reheated for hot holding using the oven parameters and minimum time
14 and temperature conditions specified in the act.

15 Sec. 14. Section 81-2,272.24, Revised Statutes
16 Supplement, 1998, is amended to read:

17 81-2,272.24. Except for individual meal portions served
18 or repackaged for sale from a bulk container upon a consumer's
19 request:

20 (1) Refrigerated, ready-to-eat, potentially hazardous
21 food prepared and held for more than twenty-four hours in a food
22 establishment shall be marked with the date of preparation and
23 consumed by a date which is no more than ten calendar days after
24 preparation. The food shall be discarded if not consumed within
25 ten calendar days after the date of preparation; and

26 (2) A container of refrigerated, ready-to-eat,
27 potentially hazardous food prepared and packaged by a food
28 processing plant shall be marked ~~to indicate~~ as follows:

1 (a) A container shall be marked by the food processor
2 with any reasonably accepted term which indicates the date by which
3 the food shall be consumed;

4 (b) A container of food to be served in a food
5 establishment shall be marked by the food establishment with the
6 date the container is opened. Such food shall be discarded if it
7 is not consumed within ten calendar days after being opened in a
8 food establishment or before the food processor's date by which the
9 food shall be consumed, whichever date occurs first; and

10 (c) A container of food which has been repackaged for
11 retail sale by a food establishment shall be labeled with a "sell
12 by" or "use by" date. Such date shall not exceed the food
13 processor's date by which the food shall be consumed or ten
14 calendar days from the date of repackaging, whichever occurs first.
15 ~~This subdivision~~

16 Subdivision (2) of this section does not apply to whole,
17 unsliced portions of a cured and processed product with original
18 casing maintained on the remaining portion, such as bologna,
19 salami, or other sausage in a cellulose casing.

20 Sec. 15. Food processing plants shall comply with the
21 federal Current Good Manufacturing Practice In Manufacturing,
22 Packing, or Holding Human Food found in 21 C.F.R. part 110 as it
23 exists on the effective date of this act.

24 Sec. 16. Section 81-2,281, Revised Statutes Supplement,
25 1998, is amended to read:

26 81-2,281. (1) The department shall enforce the Nebraska
27 Pure Food Act. The department may contract with any political
28 subdivision or state agency it deems qualified to conduct any or

1 all regulatory functions authorized pursuant to the act except
2 those functions relating to the issuance, suspension, or revocation
3 of permits or any order of probation. Holders of permits issued
4 pursuant to the act who are regularly inspected by political
5 subdivisions under contract with the department shall be exempt
6 from the inspection fees prescribed in section 81-2,270 if such
7 holders pay license or inspection fees to the political subdivision
8 performing the inspections.

9 (2) It shall be the responsibility of the regulatory
10 authority to inspect food establishments and food processing plants
11 as often as required by the act. An inspection of a salvage
12 operation shall be performed at least once every three hundred
13 sixty-five days of operation. Additional inspections shall be
14 performed as often as is necessary for the efficient and effective
15 enforcement of the act.

16 (3) All inspections conducted pursuant to the act shall
17 be performed by persons who are registered environmental health
18 specialists or trainees as defined in section 71-3702.

19 (4) Duly authorized personnel of the regulatory authority
20 after showing proper identification shall have access at all
21 reasonable times to food establishments, food processing plants, or
22 salvage operations required by the act to obtain a permit to
23 perform authorized regulatory functions. Such functions shall
24 include, but not be limited to, inspections, checking records
25 maintained in the establishment or other locations to obtain
26 information pertaining to food and supplies purchased, received,
27 used, sold, or distributed, copying and photographing violative
28 conditions, and examining and sampling food. When samples are

1 taken, the inspectors shall pay or offer to pay for samples taken.
2 The authorized personnel shall also have access to the records of
3 salvage operations pertaining to distressed salvageable and
4 salvaged merchandise purchased, received, used, sold, or
5 distributed.

6 (5) Regulatory activities performed by a political
7 subdivision or state agency under contract shall conform with the
8 provisions of the act and such activities shall have the same
9 effect as those performed by the department. Any interference with
10 the regulatory authority's duty to inspect shall be an interference
11 with the department's duties for the purposes of section 81-2,273.

12 Sec. 17. Section 81-2,288.01, Revised Statutes
13 Supplement, 1998, is amended to read:

14 81-2,288.01. (1) The regulatory authority shall document
15 on an inspection report form:

16 (a) Administrative information about the food
17 establishment's legal identity, street and mailing addresses, type
18 of establishment and operation, inspection date, status of the
19 permit, and personnel certificates that may be required;

20 (b) Specific factual observations of violative
21 conditions, omissions, or other deviations from the requirements of
22 the Nebraska Pure Food Act that require correction by the
23 permitholder; and

24 (c) Whether the violations listed are critical or
25 repeated.

26 (2) The regulatory authority shall specify on the
27 inspection report form the time frame for correction of the
28 violations as specified in the Nebraska Pure Food Act.

1 (3) All procedures and requirements related to the
2 inspection of food establishments in the act apply to food
3 processing plants and salvage operations.

4 (4) The completed inspection report form is a public
5 document that shall be made available for public disclosure to any
6 person who requests it according to law.

7 Sec. 18. The regulatory agency may increase the interval
8 between inspections beyond six months if the food establishment is
9 assigned a less frequent inspection frequency based on a written
10 risk-based inspection schedule that is being uniformly applied
11 throughout the jurisdiction.

12 Sec. 19. Critical violations are designated in the Food
13 Code and sections 81-2,270.01, 81-2,272.02 to 81-2,272.04,
14 81-2,272.06 to 81-2,272.08, 81-2,272.10, 81-2,272.12 to
15 81-2,272.18, 81-2,272.21, 81-2,272.23 to 81-2,272.27, and
16 81-2,272.29.

17 Sec. 20. Original section 81-2,252, Reissue Revised
18 Statutes of Nebraska, and sections 81-2,239, 81-2,240, 81-2,244.01,
19 81-2,245.01, 81-2,262, 81-2,270, 81-2,272.08, 81-2,272.18,
20 81-2,272.24, 81-2,281, and 81-2,288.01, Revised Statutes
21 Supplement, 1998, are repealed.